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1 entLucas Novak (SBN 257484)
LAW OFFICES OF LUCAS T. NOVAK
2 8335 W Sunset Blvd., Suite 217
3 Los Angeles, CA 90069
Telephone: (323) 337-9015
4 Email: lucas.nvk@gmail.com

5 Attorney for Plaintiff, APS&EE, LLC
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF LOS ANGELES
9

10 APS&EE, LLC, a limited liability company,)
11 Plaintiff,)

12 v.)

13 BOOHOO.COM USA, INC., a corporation,)
14 BOOHOO GROUP PLC, a corporation,)
15 BOOHOO.COM PLC, a corporation,)
16 BOOHOO.COM USA LIMITED, a)
17 corporation, PRETTYLITTLETHING.COM)
18 USA INC., a corporation,)
19 PRETTYLITTLETHING.COM LTD, a)
20 corporation, and DOES 1 through 100,)
21 inclusive,)

22 Defendants.)
23

CASE NO. 19STCV20235

**PLAINTIFF'S COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Judge:
Dept.:
Compl. Filed:

Unlimited Jurisdiction

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1 **INTRODUCTION**

2 1. This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public
3 interest of the citizens of the State of California, a representative action to enforce the People’s
4 right to be informed of the presence of Di (2-ethylhexyl) Phthalate also known as Bis (2-
5 ethylhexyl) Phthalate (“DEHP”) and Diisononyl phthalate (“DINP”), chemicals known to the
6 State of California to cause cancer and reproductive toxicity, found in purses, bags (including
7 manbags), clutches, and wallets, sold by Defendants.

8 2. The purpose of this Complaint is to remedy Defendants’ continuing failure to
9 warn California residents about the risk of exposure to DEHP and DINP in purses, bags,
10 clutches, and wallets manufactured, distributed, sold, and/or offered for sale to consumers in
11 California.

12 3. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell
13 purses, bags, clutches, and wallets, including but not limited to PLT red lion bum bag
14 CLX0502/37/48, Boohoo red paneled envelope clutch CH1065231, and Boohoo black manbag
15 QGT-M1680, containing hazardous levels of DEHP and/or DINP. The products described in this
16 paragraph shall hereinafter be referred to as the “Products”.

17 4. Children and adults are exposed to DEHP and/or DINP when they use, touch,
18 handle, play with, repair, or maintain the Products.

19 5. Hazardous levels of DEHP and/or DINP are found in the accessible surface areas
20 of the Products manufactured, distributed, sold, and/or offered for sale by Defendants to
21 consumers in California.

22 6. California Health and Safety Code section 25249.6 et seq. (“Proposition 65”)
23 provides in pertinent part: “[n]o person in the course of doing business shall knowingly and
24 intentionally expose any individual to a chemical known to the state to cause cancer or
25 reproductive toxicity without first giving clear and reasonable warning to such individual...”

26 7. Studies repeatedly conclude that exposure to DEHP and/or DINP is hazardous to
27 the health of children and adults. Accordingly, California has listed DEHP as a chemical known
28 to the state to cause cancer and reproductive toxicity, and DINP as known to cause cancer, and

1 therefore both chemicals subject to Proposition 65 warning requirements.

2 8. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell
3 the Products without the required warnings. Defendants' conduct violates the warning
4 requirements of Proposition 65.

5 **PARTIES**

6 9. Plaintiff is an organization based in California acting in the public interest.
7 Plaintiff brings this action in the public interest pursuant to California Health and Safety Code
8 section 25249.7(d).

9 10. Defendant, BOOHOO.COM USA, INC. is a person in the course of doing
10 business within the meaning of California Health and Safety Code section 25249.11.
11 BOOHOO.COM USA, INC. manufactures, distributes, and/or sells the Products for sale and use
12 in California.

13 11. Defendant, BOOHOO GROUP PLC is a person in the course of doing business
14 within the meaning of California Health and Safety Code section 25249.11. BOOHOO GROUP
15 PLC manufactures, distributes, and/or sells the Products for sale and use in California.

16 12. Defendant, BOOHOO.COM PLC is a person in the course of doing business
17 within the meaning of California Health and Safety Code section 25249.11. BOOHOO.COM
18 PLC manufactures, distributes, and/or sells the Products for sale and use in California.

19 13. Defendant, BOOHOO.COM USA, LIMITED is a person in the course of doing
20 business within the meaning of California Health and Safety Code section 25249.11.
21 BOOHOO.COM USA, LIMITED manufactures, distributes, and/or sells the Products for sale
22 and use in California.

23 14. Defendant, PRETTYLITTLETHING.COM USA INC. is a person in the course of
24 doing business within the meaning of California Health and Safety Code section 25249.11.
25 PRETTYLITTLETHING.COM USA INC. manufactures, distributes, and/or sells the Products
26 for sale and use in California.

27 15. Defendant, PRETTYLITTLETHING.COM LTD is a person in the course of
28 doing business within the meaning of California Health and Safety Code section 25249.11.

1 PRETTYLITTLETHING.COM LTD manufactures, distributes, and/or sells the Products for sale
2 and use in California.

3 16. DOES 1 through 100 are each a person in the course of doing business within the
4 meaning of California Health and Safety Code section 25249.11. DOES 1 through 100
5 manufacture, distribute, and/or sell the Products for sale and use in California. The true names of
6 DOES 1 through 100 are unknown to Plaintiff at this time. When their identities are discovered,
7 Plaintiff's Complaint shall be amended to reflect their true names.

8 17. The defendants identified in paragraphs 10-16 shall collectively be referred to
9 herein as "Defendants".

10 **JURISDICTION AND VENUE**

11 18. This Court has jurisdiction over this action pursuant to California Health and
12 Safety Code section 25249.7, which allows enforcement in any court of competent jurisdiction,
13 and pursuant to California Constitution Article VI, Section 10, because this lawsuit is based on a
14 cause not given by statute to other trial courts. Moreover, this action belongs in unlimited
15 jurisdiction since the amount in controversy exceeds \$25,000 and Plaintiff seeks permanent
16 injunctive relief.

17 19. This Court has jurisdiction over Defendants because each is a person, firm,
18 corporation, or association with sufficient minimum contacts in the State of California, or
19 otherwise purposefully avails itself to the California market as to render jurisdiction by the
20 California courts consistent with traditional notions of fair play and substantial justice.

21 20. Venue is proper in Los Angeles County Superior Court because one or more
22 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,
23 and/or because Defendants conducted, and continue to conduct, business in this County with
24 respect to the Products.

25 **FIRST CAUSE OF ACTION**

26 **(Violations of Health & Safety Code Section 25249.6 et seq.)**

27 21. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
28 Paragraphs 1 through 20, inclusive.

1 22. On December 23, 2018, Plaintiff served a sixty-day notice of violation (the
2 “Boohoo Notice”), along with a Certificate of Merit, to BOOHOO GROUP PLC,
3 BOOHOO.COM PLC, BOOHOO.COM USA, INC., BOOHOO.COM USA, LIMITED, and the
4 various public enforcement agencies with respect to the Proposition 65 violations related to
5 DEHP and DINP in the Products. In addition, on said date, in compliance with Health & Safety
6 Code section 25249.7(d), Plaintiff provided confidential factual information sufficient to
7 establish the basis for the Certificate of Merit to the California Attorney General. On December
8 23, 2018, Plaintiff also served a sixty-day notice of violation (the “PLT Notice”), along with a
9 Certificate of Merit, to PRETTYLITTLETHING.COM USA INC.,
10 PRETTYLITTLETHING.COM LTD, and the various public enforcement agencies with respect
11 to the Proposition 65 violations related to DEHP in the Products. In addition, on said date, in
12 compliance with Health & Safety Code section 25249.7(d), Plaintiff provided confidential
13 factual information sufficient to establish the basis for the Certificate of Merit to the California
14 Attorney General. The Boohoo Notice and the PLT Notice shall hereinafter collectively be
15 referred to as the “Notices.”

16 23. None of the public prosecutors with the authority to prosecute Proposition 65
17 violations has commenced and/or is diligently prosecuting the causes of action against
18 Defendants based on the claims asserted in Plaintiff’s Notices.

19 24. By placing the Products into the stream of commerce, each Defendant is a person
20 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

21 25. Defendants knew and intended that consumers, including children, will use,
22 touch, handle, play with, repair, and/or maintain the Products.

23 26. Defendants knew that the Products contain DEHP and/or DINP. Defendants, who
24 are in the business of marketing consumer goods, also should have known or have constructive
25 knowledge that the Products contain DEHP and/or DINP from widespread media coverage
26 and/or other channels of information concerning the presence of these chemicals in the types of
27 consumer goods similar to the Products.

28 27. DEHP is a chemical listed by the State of California as known to cause cancer and

1 reproductive toxicity. DINP is a chemical listed by the State of California as known to cause
2 cancer.

3 28. Defendants' Products contain sufficient quantities of DEHP and DINP such that
4 consumers, including children, who use, touch, handle, play with, repair, or maintain the
5 Products are exposed to unsafe levels of DEHP and DINP. DEHP and DINP are present in the
6 Products in such a way as to expose individuals to DEHP and DINP, as exposure is defined by
7 27 CCR section 25600.1(e): "...that results from a person's acquisition, purchase, storage,
8 consumption, or other reasonably foreseeable use of a consumer good..." Exposure occurs
9 through inhalation, ingestion and/or dermal contact during the reasonably foreseeable use of the
10 Products.

11 29. Defendants knew or should have known that the reasonably foreseeable use of the
12 Products exposes individuals to DEHP and/or DINP through inhalation, ingestion and/or dermal
13 contact.

14 30. Defendants failed to provide a "clear and reasonable warning" to individuals in
15 the State of California who were or could become exposed to DEHP and/or DINP during the
16 reasonably foreseeable use of the Products.

17 31. By committing the acts alleged in this Complaint, Defendants have violated
18 California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally
19 exposing individuals to DEHP and/or DINP without first giving clear and reasonable warnings to
20 such individuals regarding the toxicity of DEHP and/or DINP.

21 32. As a result of Defendants' wrongful conduct, individuals in the State of California
22 have been exposed to DEHP and/or DINP through the inhalation, ingestion and/or dermal
23 contact during the reasonably foreseeable use of the Products without a "clear and reasonable
24 warning", and have suffered and continue to suffer harm, each and every day since at least
25 December 23, 2015.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

28 1. That the Court, pursuant to California Health & Safety Code section 25249.7(b),

1 assess civil penalties against Defendants in the amount of \$2,500 per day for each violation
2 alleged herein;

3 2. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
4 preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering
5 the Products for sale in California without providing “clear and reasonable warnings” as defined
6 by 27 CCR section 25601;

7 3. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
8 order Defendants to take action to stop ongoing unwarned exposures to DEHP resulting from use
9 of Products sold by Defendants;

10 4. That the Court, pursuant to California Code of Civil Procedure section 1021.5, or
11 any other applicable theory, grant Plaintiff’s reasonable attorneys’ fees and costs of suit; and

12 5. Such other and further relief as may be just and proper.

13
14 Dated: June 10, 2019

LAW OFFICES OF LUCAS T. NOVAK

15
16 By: 
17 LUCAS T. NOVAK
Attorney for Plaintiff, APS&EE, LLC